No. 86-1317

Supreme Court, U.S.
FILED
MAR 5 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

49ER CHEVROLET, INC.; RICHARD E. WILMSHURST; ROBERT BATEY; and MARTIN GOLDBERG, Trustee in Bankruptcy of ULYSSES, INC.,

Petitioners,

v.

GENERAL MOTORS CORPORATION; INSURED TRANSPORTERS, INC.; and PACIFIC MOTOR TRANSPORT COMPANY,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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BRIEF IN OPPOSITION

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QUESTION PRESENTED

Does an agreement between a manufacturer and its dealer constitute unlawful price fixing under the Sherman Act where the agreement involves no resale of goods or services to third parties and merely provides that the dealer will perform warranty repairs on the manufacturer's products and be paid for those repairs by the manufacturer in accordance with policies and procedures established by the manufacturer?

PARTIES INVOLVED

The parties to the proceeding in the Court below are those set forth in the caption. Pursuant to Supreme Court Rule 28.1, General Motors Corporation states that it is not a subsidiary of a publicly owned corporation. All subsidiaries and affiliates of General Motors Corporation are wholly owned, except those set forth in the Appendix.

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Respondent General Motors Corporation ("General Motors") respectfully submits that issuance of a writ of certiorari to review the November 5, 1986, opinion of the United States Court of Appeals for the Ninth Circuit in this matter would be inappropriate.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is reported at 803 F.2d 1463 (9th Cir. 1986). The opinion of the United States District Court for the Southern District of California is not reported and is set forth as Appendix B to the Petition.

STATEMENT OF THE CASE

The case below was filed by three former dealers of motor vehicles manufactured by General Motors.[1] Although the original complaint challenged a diverse array of practices by General Motors and asserted various federal and state claims for relief, the sole subject of the Petition pertains to the long-established system by which General Motors compensates its dealers for performing warranty repairs on vehicles manufactured by General Motors.[2]

The material facts were not disputed and are primarily contained in an extensive joint stipulation submitted to the district court and which is included in the record of the Court of Appeal as CR 96.[3] Fol-

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[1] The termination of petitioners' status as dealers occurred for reasons separate from and independent of the matters asserted in this case and the reasons for the termination are not in issue.

[2] *See, e.g.*, Petition at 5.

[3] These stipulated facts were supplemented by the affidavits submitted by the parties with their summary judgment motions.

lowing the submission of the joint stipulation of facts, and pursuant to the agreement of the parties, the matter was submitted to the district court for determination upon cross-motions for summary judgment. After hearing upon the cross-motions, the district court granted summary judgment for defendants and respondents. Petitioners appealed and the Ninth Circuit affirmed.[4]

The essential facts pertinent to the Petition are as follows:

To promote sales of its automotive products, General Motors extends to consumers limited express warranties on General Motors cars and trucks purchased from General Motors dealers (CR 96, Stip. of Facts ¶ 11). Under specified conditions, these warranties obligate General Motors to repair certain defects that arise in its products within a certain time and mileage of initial sale.

To give effect to its warranties, General Motors enters into Dealer Sales and Service Agreements in which the dealers agree, among other things, to perform service required under the General Motors warranties and to be compensated for these services by General Motors (*id.* ¶ 12(a)). Under the terms of the Agreements and the applicable Service Policies and Procedures Manual, General Motors agrees to pay the dealer a fair and adequate amount for labor and either to provide or pay the dealer for parts and other materials required (*id.* ¶ 12(b)).

The Service Policies and Procedures Manuals are prepared solely by General Motors and as amended

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[4] *49er Chevrolet, Inc. v. General Motors Corp.*, 803 F.2d 1463 (9th Cir. 1986).

from time to time are provided to the dealer (*id.* ¶¶ 12 and 22). Each manual specifies procedures for determining the amount of compensation General Motors will pay the dealer for performing warranty repairs, based upon such factors as the amount of labor to perform the repair, the dealer's independently established retail customer labor rate for non-warranty service, the dealer's costs of labor and parts, and an allowance for dealer overhead (*see generally id.* ¶¶ 13-20D).[5] The retail owner pays nothing and purchases nothing from either the dealer or General Motors in respect to labor performed or parts, accessories or other materials furnished in connection with services or repairs covered by the General Motors warranties (*id.* ¶ 25).

REASONS FOR DENYING THE WRIT

The opinion of the Ninth Circuit Court of Appeals as well as the order of the district court make plain that the matter raised by the Petition presents no novel or controversial issue of federal law. Instead, the decision involves nothing more than the application of established legal precedent to findings of fact derived from the stipulated record in the district court.

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[5] Under the manuals, dealers are reimbursed for parts used (which the dealer may obtain from General Motors or others) at 130% of their cost and may elect either of two options for reimbursement for labor. Under the first option, the warranty labor rate is identical to the labor rates posted in the dealership for retail customers; under the second, the warranty labor rate is 240% of the average base rate for productive technicians plus 100% of the technicians' voluntary and legislated fringe benefits, but not to exceed the dealer's stated retail customer rate. CR 96, Stip. of Facts ¶¶ 16-20.

In a disingenuous effort to create a novel or controversial issue where none exists, the Petition mistakenly seizes upon language contained in the opinion below dealing with an abandoned and irrelevant claim concerning in transit damage to motor vehicles, and suggests that in determining the warranty issue the Ninth Circuit purports to abrogate the holding of this Court in *Monsanto Co. v. Spray-Rite Service Corp.*, 465 U.S. 752 (1984), and other cases, that vertically imposed resale price maintenance constitutes a per se violation of the antitrust laws.[6] In fact, the Ninth Circuit held, as the district court had found, that the stipulated facts "clearly show" that the system by which General Motors compensates its dealers for warranty repairs does not involve a resale to third parties and therefore the resale price maintenance cases relied on by petitioners are inapplicable:

> The dealers' reliance on the resale price maintenance cases is misplaced. This is simply not a case involving the "resale" of any goods or services to retail customers. The stipulated facts clearly show that owners of

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[6] The language upon which the Petition relies expressly relates not to the Ninth Circuit's disposition of petitioners' warranty claim but instead, as the quoted language itself demonstrates, to claims arising out of "GM's [in transit] damage repair arrangements with its dealers." *49er Chevrolet, Inc. v. General Motors Corp.*, 803 F.2d 1463, 1468 (9th Cir. 1986). That different claim, which is not the subject of the Petition, was quite properly decided by application of "rule of reason" principles, following the teaching of *Quality Auto Body, Inc. v. Allstate Insurance Co.*, 660 F.2d 1195, 1202-03 (7th Cir. 1981), *cert. denied*, 455 U.S. 1020 (1982), which involved similar factual arrangements and by the principles enunciated by this Court in *United States v. Colgate & Co.*, 250 U.S. 300 (1919).

> new cars are not charged for warranty repairs. Because the dealer compensation arrangement challenged here does not involve any kind of resale, the cases relied on by the dealers are inapplicable.

803 F.2d at 1468.

The district court found, and the Ninth Circuit agreed, that the warranty repair compensation arrangements at issue were nothing more than agreements between General Motors as buyer and its dealers as sellers "to establish a price at which GM will buy warranty repair parts and services from its dealers".[7]

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[7] 803 F.2d at 1468. And, like every other court that has considered the issue, the court rejected the proposition that an agreement which does no more than merely establish the price to be charged between the buyers and sellers who are parties to the agreement constitutes unlawful price fixing. *See, e.g., Kartell v. Blue Shield, Inc.*, 749 F.2d 922, 925-26 (1st Cir. 1984), *cert. denied*, 471 U.S. 1029 (1985); *Royal Drug Co. v. Group Life & Health Insurance Co.*, 737 F.2d 1433, 1436-38 (5th Cir. 1984), *cert. denied*, 469 U.S. 1160 (1985); *Medical Arts Pharmacy, Inc. v. Blue Cross & Blue Shield, Inc.*, 675 F.2d 502, 505-06 (2d Cir. 1982); *Proctor v. State Farm Mutual Automobile Insurance Co.*, 675 F.2d 308, 337-38 (D.C. Cir.), *cert. denied*, 459 U.S. 839 (1982); *Quality Auto Body, Inc. v. Allstate Insurance Co.*, 660 F.2d 1195, 1203 (7th Cir. 1981), *cert. denied*, 455 U.S. 1020 (1982); *Sitkin Smelting & Refining Co. v. FMC Corp.*, 575 F.2d 440 (3d Cir.), *cert. denied*, 439 U.S. 866 (1978); *Travelers Insurance Co. v. Blue Cross*, 481 F.2d 80, 84 (3d Cir.), *cert. denied*, 414 U.S. 1093 (1973); *Sun Oil Co. v. Vickers Refining Co.*, 414 F.2d 383, 389-90 (8th Cir. 1969); *Ball Memorial Hospital, Inc. v. Mutual Hospital Insurance, Inc.*, 603 F. Supp. 1077, 1086-87 (S.D. Ind. 1985), *aff'd*, 784 F.2d 1325 (7th Cir. 1986); *Feldman v. Health Care Service Corp.*, 562 F. Supp. 941, 947-48 (N.D. Ill. 1982); *Kartell v. Blue Shield, Inc.*, 542 F. Supp.

Notwithstanding the plethora of conclusory and argumentative statements contained in the Petition regarding the purported anticompetitive effects of the warranty repair agreements between General Motors and its dealers, those statements are without support in the record upon which the district court made its determination and the Ninth Circuit so held:

> [T]he dealers in this case failed to make an adequate showing of harmful anticompetitive effects resulting from the existing warranty payment arrangements . . . ."

803 F.2d at 1469.

From the outset, this case has raised no substantial issue under the federal antitrust laws. Petitioners are simply unhappy with the amount of compensation they received for performing warranty repairs under their

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782, 795-96 (D. Mass. 1982); *Workman v. State Farm Mutual Automobile Insurance Co.*, 520 F. Supp. 610, 624-25 (N.D. Cal. 1981); *Medical Arts Pharmacy, Inc. v. Blue Cross & Blue Shield, Inc.*, 518 F. Supp. 1100, 1107 (D. Conn. 1981), *aff'd*, 675 F.2d 502 (2d Cir. 1982); *Sausalito Pharmacy, Inc. v. Blue Shield*, 544 F. Supp. 230 (N.D. Cal. 1981), *aff'd per curiam*, 677 F.2d 47 (9th Cir.), *cert. denied*, 459 U.S. 1016 (1982); *Blue Cross & Blue Shield v. Michigan Ass'n of Psychotherapy Clinics*, 1980-2 Trade Cas. (CCH) ¶ 63,351, at 75,793-94 (E.D. Mich. 1980); *American Telephone & Telegraph Co. v. Delta Communications Corp.*, 408 F. Supp. 1075, 1102 (S.D. Miss. 1976), *aff'd*, 579 F.2d 972 (5th Cir. 1978), *modified and reh'g denied*, 590 F.2d 100 (5th Cir.), *cert. denied*, 444 U.S. 926 (1979); *Knuth v. Erie-Crawford Dairy Cooperative Ass'n*, 326 F. Supp. 48, 53 (W.D. Pa. 1971), *aff'd in part, rev'd in part on other grounds*, 463 F.2d 470 (3d Cir. 1972), *cert. denied*, 410 U.S. 913 (1973); *Credit Bureau Reports, Inc. v. Retail Credit Co.*, 358 F. Supp. 780, 786-87 (S.D. Tex. 1971), *aff'd*, 476 F.2d 989 (5th Cir. 1973); *Fagan v. Sunbeam Lighting Co.*, 303 F. Supp. 356, 360-61 (S.D. Ill. 1969).

agreements with General Motors. If they have a valid complaint at all (which they do not) their remedy is under state law.[8]

CONCLUSION

For the foregoing reasons, the Petition for Certiorari should be denied.

Respectfully submitted,

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March, 1987

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[8] In their complaint below, petitioners alleged such claims under a variety of state statutes. These pendent state claims were dismissed on jurisdictional grounds and, while referred to in the Petition are not now properly before the Court. *See, e.g.*, Petition at 3 and 23.

APPENDIX

APPENDIX

SUBSIDIARIES OF GENERAL MOTORS CORPORATION OTHER THAN WHOLLY OWNED SUBSIDIARIES

Alambrados Automatrices, S.A. de C.V. (Mexico)

Alambrados y Circuitos Electricos, S.A. de C.V. (Mexico)

AMBRAKE Corporation (USA)

Aralmex, S.A. de C.V. (Mexico)

Automotriz Gencor S.A. (Ecuador)

Autos y Maquinas del Ecuador S.A. (AYMESA) (Ecuador)

Cableados de Juarez, S.A. de C.V. (Mexico)

CABLESA-Industria de Componentes Electricos Limitada (Portugal)

Calsonic Harrison Co., Ltd. (Japan)

Compania Nacional de Direcciones Automotrices, S.A. de C.V. (Mexico)

Componentes Mecanicos de Matamoros, S.A. de C.V. (Mexico)

Compresores Delfa, C.A. (Venezuela)

Conductores y Componentes Electricos, de Juarez, S.A. de C.V. (Mexico)

Convesco Vehicle Sales GmbH (West Germany)

Daewoo Automotive Components, Ltd. (Korea)

Daewoo Motor Co., Ltd. (Korea)

Delco Electronics Corporation (USA)

Delkor Battery Company, Ltd. (Korea)

Delmex de Juarez, S.A. de C.V. (Mexico)

Delnosa, S.A. de C.V. (Mexico)

Delredo, S.A. de C.V. (Mexico)

Deltronicos de Matamoros, S.A. de C.V. (Mexico)

Detroit Deere Corporation (USA)

DHB - Componentes Automotivos S.A. (Brazil)

DHMS Industries, Ltd. (Korea)

DR DE CHIHUAHUA, S.A. de C.V. (Mexico)

Fabrica Colombiana de Automotores S.A. ("Colomotores") (Columbia)

General Motors Argentina S.A. (in liquidation) (Argentina)

General Motors de Colombia S.A. (Colombia)

General Motors Egypt, S.A.E. (Egypt)

General Motors Espana, S.A. (Spain)

General Motors (Europe) AG (Switzerland)

General Motors France (France)

General Motors Hellas, A.B.E.E. (Greece)

General Motors-Holden's Limited (Australia)

General Motors Iran Limited (Iran)

General Motors Kenya Limited (Kenya)

General Motors Korea Co., Ltd. (Korea)

General Motors del Peru S.A. (Peru)

General Motors de Portugal, Limitada (Portugal)

General Motors Terex do Brasil Ltds. (Brazil)

GM Allison Japan Limited (Japan)

GM Locomotivas Ltda. (Brazil)

GMFanuc Robotics Corporation (USA)

Hua Tung Automotive Corporation (Rep. of China)

Ilmor Engineering, Ltd. (England)

Industries Mecaniques Maghrebines, S.A. (Tunisia)

Industrija Delova Automobila, Kikinda (Yugoslavia)

INLAN-Industria de Componentes Mecanicos, Lda. (Portugal)

Isuzu Motors Limited (Japan)

Isuzu Motors Overseas Distribution Corp. (Japan)

Kabelwerke Reinshagen GmbH (West Germany)

Kabelwerke Reinshagen Werk Berlin GmbH (West Germany)

Kabelwerke Reinshagen Werk Neumarkt GmbH (West Germany)

Koram Plastics Company, Ltd. (Korea)

Metal Casting Technology, Inc. (USA)

Moto Diesel Mexicans, S.A. de C.V. (Mexico)

Motor Enterprises, Inc. (USA)

New United Motor Manufacturing, Inc. (USA)

NHK Inland Corporation (Japan)

Omnibus BB Transportes, S.A. (Ecuador)

Promotora de Partes Electronicos Automotrices (Mexico)

P.T. Mesin Isuzu Indonesia (Indonesia)

Rimir, S.A. de C.V. (Mexico)

Rio Bravo Electricos, S.A. de C.V. (Mexico)

Senalizacion y Accesorios del Automovil Yorka, S.A. (Spain)

Shinsung Packard Company, Ltd. (S. Korea)

Sistemas Electricos y Conmutadores, S.A. de C.V. (Mexico)

Sung San Company, Ltd. (S. Korea)

Suzuki Motor Co., Ltd. (Japan)

TEREX Equipment Limited (Scotland)

Unicables, S.A. (Spain)

Vauxhall Motors Limited (England)

Vestiduras Fronterizas, S.A. de C.V. (Mexico)